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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,642	10/26/2001	Walter Douglas Bauman	60130-1215/01MRA0354	9792

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EXAMINER

JONES, JUDSON

ART UNIT	PAPER NUMBER
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2834

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/056,642

Applicant(s)

BAUMAN ET AL.

Examiner

Judson H. Jones

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.01.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 16 (second one) been renumbered 17.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Denne 6,268,667 B1. Denne discloses an actuator assembly comprising a telescopic member defining an axis and a linear motor with coils 103 and magnets 108 for driving the telescopic member between an extended and a retracted position as shown in figure 1.

In regard to claims 2-4, see Denne column 2 lines 15-24.

In regard to claim 6, see Denne column 4 lines 22-32.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Denne in view of Hwang et al. 6,300,691 B1. Denne discloses the telescopic member movable by the linear motor but does not disclose the stator of the linear motor being substantially U-shaped. In column 3 line 15 Denne mentions annular coils, which would make the stator O-shaped. However Hwang et al. teaches in figure 2 that a stator can be made into a U shape. Hwang et al. further teaches in figures 7 and 8 that a U shaped stator allows for cooling of the coils and magnets of the linear motor. Since Denne and Hwang et al. are from the same field of endeavor it would have been obvious at the time the invention was made for one of ordinary skill in the art to have utilized a U-shaped stator in order to better cool the motor and thus increase the efficiency of the motor.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Denne in view of Kabout 5,712,516. Denne discloses the telescopic member, controller and linear motor but does not disclose using remote control. Kabout teaches in column 2 lines 47-53 that remote control of a motor can be useful. Since Kabout and Denne are from the same field of endeavor, it would

have been obvious at the time the invention was made for one of ordinary skill in the art to have utilized a remote control device in order to make operation of the actuator more convenient.

Claims 8, 9, 11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephan et al. in view of Denne. Stephan et al. teaches the use of gas springs for gradual lifting of liftgates and hood panels but does not disclose a linear motor connected to a gas spring. Denne teaches in column 2 lines 15-31 combining linear motors and gas springs in order to make relative motion between two objects easier and more convenient. Since Denne and Stephan et al. are from the same field of endeavor, it would have been obvious at the time the invention was made for one of ordinary skill in the art to have utilized a linear motor combined with a gas spring for opening and closing a vehicle liftgate and thus increasing the convenience and usefulness of a motor vehicle.

In regard to claim 11, see Denne column 4 lines 22-32.

In regard to claim 14, see Stephan et al. column 3 lines 7-12.

In regard to claims 15 and 16, see Stephan et al. column 6 lines 38-39 and Denne column 4 lines 22-32. Stephan et al. refers to the unlatching of the gate, which is viewed as being the same as unlocked. While Stephan et al. does not mention latched or locked, that is implied by the word unlatched.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stephan et al. as modified by Denne as applied to claim 9 and further in view of Hwang et al. Stephan et al. as modified by Denne discloses the telescopic member movable by the linear motor but does not disclose the stator of the linear motor being substantially U-shaped. In column 3 line 15 Denne mentions annular coils, which would make the stator O-shaped. However Hwang et al. teaches in

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figure 2 that a stator can be made into a U shape. Hwang et al. further teaches in figures 7 and 8 that a U shaped stator allows for cooling of the coils and magnets of the linear motor. Since Stephan et al. as modified by Denne and Hwang et al. are from the same field of endeavor it would have been obvious at the time the invention was made for one of ordinary skill in the art to have utilized a U-shaped stator in order to better cool the motor and thus increase the efficiency of the motor.

Claims 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stephan et al. as modified by Denne as applied to claims 11 and 13 and further in view of Kabout. Stephan et al. as modified by Denne discloses the telescopic member, controller and linear motor but does not disclose using remote control. Kabout teaches in column 2 lines 47-53 that remote control of a motor can be useful. Since Kabout and Stephan et al. as modified by Denne are from the same field of endeavor, it would have been obvious at the time the invention was made for one of ordinary skill in the art to have utilized a remote control device in order to make operation of the actuator for the liftgate more convenient.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Judson H Jones whose telephone number is 703-308-0115. The examiner can normally be reached on 8-4:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nestor Ramirez can be reached on 703-308-1371. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3431 for regular communications and 703-305-3432 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

JHJ

April 6, 2003


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